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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

In re S.G., a Person Coming Under the  
Juvenile Court Law.

SAN BERNARDINO COUNTY  
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

C.G. et al.,

Defendants and Appellants.

E059084

(Super.Ct.No. J247315)

OPINION

APPEAL from the Superior Court of San Bernardino County. Christopher B.  
Marshall, Judge. Affirmed.

Roni Keller, under appointment by the Court of Appeal, for Defendants and  
Appellants.

Jean-Rene Basle, County Counsel, and Adam E. Ebright, Deputy County Counsel,  
for Plaintiff and Respondent.

Appellants Ca.G. and Ch.G. (grandparents) are the paternal grandparents of the minor S.G., the subject of this dependency proceeding. Grandparents claim that the juvenile court abused its discretion by summarily denying their Welfare and Institutions Code<sup>1</sup> section 388 petition, which requested the juvenile court to modify its previous order placing S.G. in the care of nonrelative extended family members and instead to place S.G. in grandparents' custody. (§ 388, subd. (a)(1).) We affirm.

## I. FACTS AND PROCEDURAL BACKGROUND

When S.G. was born in October 2012, he and his mother both tested positive for methamphetamines, and the matter was referred to San Bernardino County Children and Family Services (CFS). Mother reported a long history of mental disorders and drug abuse, and she has a criminal record that includes child endangerment and drug charges. S.G.'s father, too, reported a long and ongoing history of drug abuse, and has a criminal history that includes child endangerment, domestic violence, and drug charges. This was not the family's first referral to CFS: the first referral came when mother tested positive for methamphetamines when S.G.'s older sibling was born, in 2008. In 2009, the family was referred to CFS again after police, serving a search warrant based on information that father was selling drugs from their home, found dangerous and unsanitary conditions, including mother and father both under the influence of methamphetamine, while a three-month-old infant lay sleeping on a soiled mattress amid the rubbish, wearing a dirty diaper and with a broken methamphetamine pipe within reach. These conditions led to

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<sup>1</sup> All further statutory references will be to the Welfare and Institutions Code unless otherwise noted.

felony child endangerment charges for S.G.'s parents. At the time of each of these three referrals to CFS, mother and father were living in grandparents' house, even though after the 2009 incident, grandparents had agreed with CFS that they would not allow father to return to the home.

S.G. was placed in foster care on December 18, 2012. On May 1, 2013, the juvenile court held a non-appearance review hearing to consider the issue of relative placement. The social worker reported to the court that, as of that date, mother's whereabouts were unknown, and father was incarcerated, so placement with them would not be appropriate. The social worker also reported grandparents' interest in having S.G. placed with them, but recommended against the court doing so. The social worker described grandparents' previous involvement with CFS. The social worker noted, among other things, that grandparents had known of S.G.'s parents' drug abuse, and had been aware of the conditions in their house that led to the 2009 child endangerment charges for S.G.'s parents; nevertheless, grandparents continued repeatedly to allow S.G.'s parents to move back in. The court accepted the proposed orders, finding grandparents were not appropriate for placement.

On May 17, 2013, grandparents filed the section 388 petition at issue in this appeal. They submitted a declaration expressing their desire to have S.G. placed with them, and asserting their belief that their home would be "the best place for the foster care of [S.G.]. Grandparents noted that they "are presently caring for [S.G.'s] two full

siblings.”<sup>2</sup> The petition also included a certificate of approval issued by the relative assessment unit of CFS on February 28, 2013, finding grandparents’ home “meets approval standards” for placement of S.G.

On June 26, 2013, the juvenile court heard oral argument on grandparents’ section 388 petition. The court found that grandparents had failed to demonstrate any change in circumstances, and had failed to demonstrate that a change in the court’s previous order would be in the best interests of the child, and therefore summarily denied the petition.

## II. DISCUSSION

Grandparents contend the juvenile court erred by denying them an evidentiary hearing on their request to change a court order (§ 388) because they made a prima facie showing that there was a genuine change of circumstances and that modification of the court’s previous order would be in the best interests of the child. We disagree.

“Section 388 permits ‘[a]ny parent or other person having an interest in a child who is a dependent child of the juvenile court’ to petition ‘for a hearing to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court’ on grounds of ‘change of circumstance or new evidence.’ (§ 388, subd. (a).) ‘If it appears that the best interests of the child may be promoted by the proposed change of order, . . . the court shall order that a hearing be held . . .’ [Citation.] Section 388 thus gives the court two choices: (1) summarily deny the petition or (2) hold a hearing.

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<sup>2</sup> Both of S.G.’s siblings are living in grandparents’ house: S.G.’s paternal grandmother is the legal guardian of one of the siblings, while S.G.’s paternal aunt, who also resides in grandparents’ house, is the legal guardian of the other.

[Citations.] In order to avoid summary denial, the petitioner must make a ‘prima facie’ showing of ‘facts which will sustain a favorable decision if the evidence submitted in support of the allegations by the petitioner is credited.’ [Citations.]” (*In re Lesly G.* (2008) 162 Cal.App.4th 904, 912.)

There are two requirements for a prima facie showing: the petitioner must show that (1) there is a genuine change of circumstances or new evidence, and (2) a modification of a previous order would be in the best interests of the child. (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 250.) In considering whether such a showing has been made, the court may consider, among other things, “(1) the seriousness of the problem which led to the dependency, and the reason for any continuation of that problem; (2) the strength of relative bonds between the dependent children to *both* parent and caretakers; and (3) the degree to which the problem may be easily removed or ameliorated, and the degree to which it actually has been.” (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 531-532.)

“We review a summary denial of a hearing on a modification petition for abuse of discretion. [Citation.] Under this standard of review, we will not disturb the decision of the trial court unless the trial court exceeded the limits of legal discretion by making an arbitrary, capricious or patently absurd determination. [Citation.]” (*In re A.S.* (2009) 180 Cal.App.4th 351, 358.)

We do not find any abuse of discretion by the juvenile court. The document issued by the residential approval unit, and submitted in support of grandparents’ petition, had not been previously presented to the juvenile court. But the underlying facts relating

to the circumstances in grandparents' household—including the fact that S.G.'s siblings were already living there, were apparently well cared for, and that grandparents desired to care for S.G.—had previously been presented to the court, and been ruled upon. There had been no changes in those underlying facts; indeed, grandparents' counsel in the juvenile court conceded, when pressed by the court, "I don't think anything has changed from the facts at the detention stage." We find nothing arbitrary, capricious, or absurd in the juvenile court's finding that grandparents failed to demonstrate any change in circumstances, and in any case had failed to demonstrate that it would be in S.G.'s best interest to change its previous order and place S.G. in grandparents' care.

On appeal, grandparents take the position that the May 1, 2013, report *itself* constitutes a change in circumstances. This argument was not raised in the juvenile court and is therefore waived. (See *In re K.D.* (2004) 124 Cal.App.4th 1013, 1018.) In any case, however, the argument is without merit. Grandparents misconstrue the meaning of "change in circumstances" in this context, which is properly understood to refer to changes in the circumstances that led to the dependency and its continuation. (See *In re Kimberly F.*, *supra*, 56 Cal.App.4th at pp. 530-531.) To be sure, a report submitted to the juvenile court could theoretically contain new information about such circumstances, which might support the granting of a section 388 petition. As discussed above, however, that is not the case here.

### III. DISPOSITION

The order appealed from is affirmed.

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HOLLENHORST

Acting P. J.

We concur:

MCKINSTER

J.

KING

J.